

After reviewing the record and considering the parties' arguments, the Board concludes the October 1, 2002 preliminary hearing Order should be affirmed.

At the August 2002 preliminary hearing, claimant testified that on May 11, 2002, she and a coworker, Nancy Katzer, were lifting one of respondent's nursing home residents from bed into a wheelchair sometime between 6:30 and 7:30 a.m., when claimant felt a pulling sensation and pain in her lower back. Claimant also testified that she notified her supervisor, Betsy Swezey, about the accident when Ms. Swezey telephoned the facility around 9 or 9:30 a.m.

Despite having ongoing back symptoms, claimant completed her shift and went home to bed. But rather than her symptoms improving, claimant's symptoms worsened, requiring her to seek medical treatment at a Joplin, Missouri, hospital emergency room.

After reporting the accident to the acting administrator, respondent referred claimant to the company doctor, Dr. Donald M. Holsinger. Claimant saw the doctor on May 21, 2002, and told him that she had injured her back at work on May 11, 2002, while lifting a resident. The doctor diagnosed acute low back strain.

Before the preliminary hearing, respondent and its insurance carrier took the deposition of Nancy Katzer. Ms. Katzer testified that on May 11, 2002, she and claimant lifted a particularly difficult resident, and immediately afterwards claimant complained that she had injured her shoulder. Ms. Katzer does not recall whether claimant also mentioned injuring her back.

I knew she had hurt her shoulder. If she hurt her back I -- honestly I don't remember if she said anything about it. It's been so long.¹

According to Ms. Katzer, claimant was in obvious pain after the lifting incident, with her pain worsening throughout the day.

Contrary to claimant's testimony, Ms. Katzer believed the lifting incident occurred after breakfast and that it occurred when they were transferring the resident from a wheelchair to bed.

Respondent and its insurance carrier also presented the testimony of Charlotte Rhynerson, another coworker. According to Ms. Rhynerson, early in the morning of May 11, 2002, claimant was holding her back and, when asked, claimant stated that she had hurt her back several nights before, while moving residents' beds during a tornado alert.

Betsy Swezey, who was respondent's director of nursing in May 2002, also testified by deposition. Ms. Swezey remembers telephoning respondent's nursing home facility on

¹ Katzer Depo. at 12.

May 11, 2002. According to Ms. Swezey, in their telephone conversation claimant did not advise that she had hurt her back but, instead, stated that she felt ill and had menstrual cramps. Ms. Swezey states that she was not aware that claimant had hurt her back until several days later when claimant presented a note from a doctor. After listening to a conversation between claimant and Kara Bell, the acting administrator, Ms. Swezey understood that claimant was not certain whether she had injured her back lifting residents, moving beds during a tornado alert, or moving a washing machine at home.

Respondent and its insurance carrier also presented the testimony of Kara Bell. Ms. Bell remembers claimant's account of her back injury somewhat differently than Ms. Swezey. According to Ms. Bell, claimant stated that she had moved some appliances at home a few days earlier, which had caused her back to be sore, but that she also thought that she had injured her back again while transferring a patient.

Claimant specifically denied injuring her back moving a washing machine at home. Moreover, Ms. Katzer recalled that claimant had mentioned moving a washing machine in one of their conversations, but Ms. Katzer did not remember claimant attributing her back injury to that event.

The Judge had the opportunity to observe claimant testify and, therefore, the opportunity to assess her demeanor. Despite conflicting testimony, the Judge found claimant's testimony credible, as implied by the Order granting her request for benefits.

Considering the record compiled to date, the Board agrees with the Judge's analysis of the evidence. Although Ms. Katzer believes that claimant complained of shoulder pain instead of back pain, Ms. Katzer does remember a May 11, 2002 lifting incident during which claimant complained that she had been injured and was experiencing pain. Ms. Katzer also recalls claimant's symptoms worsening throughout that day as she continued to work. Additionally, Ms. Bell acknowledged that in their initial conversation regarding claimant's back injury, claimant advised she thought she had injured her back lifting a resident.

For purposes of preliminary hearing, the Board finds that it is more likely true than not that claimant injured her back at work on May 11, 2002, while lifting a resident. In addition, claimant's accidental injury arose out of and in the course of employment with respondent. Consequently, claimant is entitled to receive workers compensation benefits for that accident.

WHEREFORE, the Board affirms the October 1, 2002 preliminary hearing Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Stephen P. Doherty, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation